

**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

**ORIGINAL** **OPEN MEETING ITEM**



0000063366

RECEIVED

**ARIZONA CORPORATION COMMISSION**

DATE: NOVEMBER 6, 2006

2006 NOV -6 P 1:26

DOCKET NO: T-03632A-06-0215

AZ CORP COMMISSION  
DOCUMENT CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe.  
The recommendation has been filed in the form of an Order on:

DIECA COMMUNICATIONS, INC. dba  
COVAD COMMUNICATIONS COMPANY  
(ASSET ENCUMBRANCE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 15, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 21, 2006 and NOVEMBER 22, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

**DOCKETED**

NOV -6 2006

DOCKETED BY	NR
-------------	----

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 JEFF HATCH-MILLER, Chairman  
5 WILLIAM A. MUNDELL  
6 MIKE GLEASON  
7 KRISTIN K. MAYES  
8 BARRY WONG

9 IN THE MATTER OF THE APPLICATION OF  
10 DIECA COMMUNICATIONS, INC. D/B/A  
11 COVAD COMMUNICATIONS COMPANY FOR  
12 EXPEDITED APPROVAL TO ENCUMBER  
13 ASSETS IN CONNECTION WITH NEW  
14 FINANCING.

DOCKET NO. T-03632A-06-0215

DECISION NO. \_\_\_\_\_

ORDER

11 Open Meeting  
12 November 21 and 22, 2006  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the  
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

17 1. On April 3, 2006, DIECA Communications, Inc., d/b/a Covad Communications  
18 Company ("Covad" or "Applicant") filed an application with the Arizona Corporation Commission  
19 ("Commission") for authorization to encumber its assets in the State of Arizona in connection with  
20 providing its guarantee, or to otherwise provide security in connection with financings of up to \$200  
21 million for its parent, Covad Communications Group, Inc. ("Parent"), pursuant to A.R.S. § 40-285.  
22 The stated purpose of the proposed financing is to repay other loans, or for general corporate  
23 purposes, capital expenses and working capital, as well as for acquisition of other telecommunication  
24 companies and/or telecommunication assets. Covad requests authority for its Parent to pledge a  
25 security interest in certain of Covad's assets, including its receivables, tangible personal property,  
26 equipment, and intellectual property as collateral security for the debt. The application also states  
27 that Covad may participate as a co-borrower.  
28

1           2.       On September 27, 2006, Applicant filed a Notice of Filing Affidavit of Publication.

2           3.       On October 20, 2006, the Commission's Utilities Division ("Staff") filed a Staff  
3 Report recommending conditional approval of the application to pledge assets as a guarantee for new  
4 Parent debt, and recommending denial of the request to incur debt.

5           4.       Covad, a Virginia Corporation, is a wholly-owned subsidiary of Covad Group.  
6 Covad provides fiber optic based competitive data video and internet services to customers in 31  
7 states and the District of Columbia. Covad provides integrated voice and data communications, and  
8 offers DSL, VOIP, web hosting, managed security, IP and dial-up, and bundled voice and data  
9 services nationwide, directly through its network and through internet service providers, value-added  
10 resellers, telecommunications carriers, and affinity groups to small and medium sized business and  
11 home users.

12          5.       Pursuant to Decision No. 61942 (September 19, 1999), Covad was granted authority to  
13 provide resold and facilities based local exchange and interexchange telecommunications services  
14 throughout Arizona.

15          6.       Covad stated in its application that all its physical assets located in Arizona are used  
16 only to provide interstate service, that it does not currently provide intrastate services in Arizona.

17          7.       Covad has requested authorization to serve as co-borrower for financing up to \$200  
18 million and to encumber its assets by providing a guarantee or other security in connection with the  
19 financing by itself or the Parent. The proposed financings include a \$50 million revolving line of  
20 credit from a commercial bank, as well as a \$50 million investment from Earthlink in return for \$10  
21 million of common stock in the Parent and a \$40 million senior secured convertible note. Covad  
22 stated that the interest rate will not be determined until each financing is finalized, and will likely be  
23 the market rate for similar financing.

24          8.       Staff evaluated financial statements provided by Covad under protective agreement,  
25 concluded that it is inappropriate for Covad to acquire any new debt, and recommended denial of  
26 Covad's request for authorization to participate in any new debt as borrower or co-borrower.

27          9.       Staff reviewed the proposed transaction and concluded that Covad and its Parent  
28 would benefit from the proposed pledge of assets and guarantee, as it will facilitate the funding of

1 operational activities and is unlikely to have significant detrimental effect on Covad's Arizona  
2 customers.

3 10. Based on its review of the proposed transaction, Staff determined that encumbrance of  
4 Covad's assets would not impair the financial status of Covad, would not impair its ability to attract  
5 capital, and would not impair Covad's ability to provide safe, reasonable and adequate service. Staff  
6 stated that alternative service providers are available, and Covad's customers would not experience  
7 significant harm in the event that its Parent has financial difficulties.

8 11. Staff recommended approval of Covad's request for authority to pledge assets as a  
9 guarantee or to provide other forms of security for the proposed financing of up to \$200 million by its  
10 Parent, subject to the condition that all Arizona customer deposits and prepayments be excluded from  
11 encumbrance, or in the alternative, that they are secured by a bond which is not included in the  
12 pledged collateral.

13 12. Staff recommended authorizing Covad to engage in any transactions and to execute  
14 any documents necessary to effectuate the authorizations granted.

15 13. Staff further recommended that Covad be required to provide one copy of all notes,  
16 executed security documents, and all other documents memorializing the transactions, to the  
17 Compliance Section of the Utilities Division within 60 days of any loan closing.

18 14. Staff stated that Covad has no outstanding compliance issues with the Commission.

19 15. Staff's recommendations are reasonable and should be adopted.

20 **CONCLUSIONS OF LAW**

21 1. Applicant is a public service corporation within the meaning of Article XV of the  
22 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

23 2. The Commission has jurisdiction over Applicant and the subject matter of the  
24 application.

25 3. Notice of the application was given in accordance with the law.

26 4. The pledge of assets as a guarantee, exclusive of customer deposits and prepayments,  
27 in support of the Parent's financing up to \$200 million approved herein is for lawful purposes within  
28 Covad's corporate powers, is compatible with the public interest, is consistent with sound financial

1 practices, and with the proper performance by Covad of service as a public service corporation, and  
2 will not impair Covad's ability to perform that service.

3 5. The encumbrance approved herein is for the purposes stated in the application and is  
4 reasonably necessary for those purposes.

5 **ORDER**

6 IT IS THEREFORE ORDERED that the application by DIECA Communications, Inc., d/b/a  
7 Covad Communications Company for authorization to encumber assets in connection with new  
8 financing for its parent, Covad Communications Group, Inc., as provided for herein, shall be, and  
9 hereby is, granted, subject to the condition that all Arizona customer deposits and prepayments be  
10 excluded from encumbrance, or in the alternative, that they are secured by a bond which is not  
11 included in the pledged collateral.

12 IT IS FURTHER ORDERED that DIECA Communications, Inc., d/b/a Covad  
13 Communications Company's application for authorization to participate, in whole or in part, in the  
14 \$200 million debt as borrower or co-borrower shall be, and hereby is, denied.

15 IT IS FURTHER ORDERED that DIECA Communications, Inc., d/b/a Covad  
16 Communications Company is hereby authorized to engage in any transactions and to execute any  
17 documents necessary to effectuate the financings for which the encumbrance authorization is granted  
18 herein.

19 ..

20 ..

21 ..

22 ..

23 ..

24 ..

25 ..

26 ..

27 ..

28 ..

1 IT IS FURTHER ORDERED that DIECA Communications, Inc., d/b/a Covad  
2 Communications Company shall provide one copy of all notes, executed security documents and all  
3 other documents memorializing the transactions necessary to effectuate the financings for which the  
4 encumbrance authorization is granted herein to the Compliance Section of the Utilities Division  
5 within 60 days of any loan closing.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
8  
9

10 CHAIRMAN

COMMISSIONER

11  
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13  
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Director of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_ day of \_\_\_\_\_, 2006.

19  
20 BRIAN C. McNEIL  
21 EXECUTIVE DIRECTOR

22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

SERVICE LIST FOR:

DIECA COMMUNICATIONS, INC. D/B/A COVAD  
COMMUNICATIONS COMPANY

2 DOCKET NO.:

T-03632A-06-0215

3 Michael W. Patten  
4 ROSHKA, DeWULF & PATTEN  
400 East Van Buren Street, Ste. 800  
5 Phoenix, AZ 85004

6 Joan M. Griffin  
6 Melissa S. Conway  
KELLEY DRYE & WARREN  
7 3050 K Street N.W., Ste. 400  
Washington, DC 20007

8 Anthony Hansel, Senior Counsel  
9 Covad Communications Group, Inc.  
600 14<sup>th</sup> St. NW  
10 Washington, DC 20005

11 Christopher Kempley, Chief Counsel  
Legal Division  
12 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director  
Utilities Division  
15 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
16 Phoenix, AZ 85007

17

18

19

20

21

22

23

24

25

26

27

28